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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No. 17502 of 2020

and

WMP.Nos. 21685 & 21686 of 2020

S.Srinivasan

..Petitioner

Vs

1. Secretary to Government  
Revenue and Disaster Management Department,  
Secretariat, Chennai-600009.
2. The Principal Secretary & Commissioner  
of Revenue Administration & Disaster Management,  
Chepauk, Chennai -5.
3. The District Collector,  
Collector's Office,  
Kancheepuram District - 631501.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminating in the impugned reply dated 16.3.2020 in Letter No Ser 2(1)/ 40585/2017 issued by the second Respondent and quash the same and direct the Respondents first and second to reinsate the Petitioner in service with all benefits including continuity of service.

For Petitioner : Mr. Aravind Subramanyam

For Respondents : Mr.V.Jeevagiridharan, AGP

O R D E R

The relief sought for in the present writ petition is to call for the records culminating in the impugned reply dated 16.3.2020 in Letter No Ser 2(1)/ 40585/2017 issued by the second Respondent and quash the same and direct the Respondents first and second to reinstate the Petitioner in service with all benefits including continuity of service.



2. The learned counsel appearing for the writ petitioner submitted that, based on the complaint received from one Nirmal Kumar, a criminal case was registered in Crime No. 6/AC/2017 that the petitioner had demanded Rs.15,000/- for recommending to transfer the TASMAL shop bearing no. 4388 situated in Minnal Sithamboor, Madurantakam Taluk, Kancheepuram District to Thenampakkam Village, Kancheepuram Taluk. Subsequently, the 1<sup>st</sup> respondent issued orders dated 08.12.2017, suspending the petitioner from service and the said suspension is in force.

3. According to the learned counsel for the petitioner, the respondent/department has not initiated any departmental proceedings and the subsistence allowance also not paid to the petitioner till date. The petitioner made representations to the respondent on 06.06.2019 and 20.11.2019. The said representation were rejected by the respondents stating reason that request for review the order of suspension cannot be complied with.

4. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India and others reported in 2015 (7) SCC291. The relevant portion of the order is extracted below;

"Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the



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accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

10 The Supreme Court of the United States struck down the use of nolle prosequi, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in *Klapper vs. State of North Carolina* 386 U.S. 213 (1967). In *Kartar Singh vs. State of Punjab* (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better the extract these paragraphs from that celebrated decision.

" 86 The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

5. The contention of the learned counsel for the petitioner is that in the light of the aforesaid decision of the Hon'ble Supreme Court, the respondent shall pass appropriate orders.

6. The learned Additional Government Pleader has fairly submitted that the Hon'ble Division Bench of this Court in the case of *The State of Tamil Nadu and 2 others Vs.D.Shankar*



reported in 2017 (3) TNLJ 408 (Civil) has followed the ratio of the Hon'ble Supreme Court cited supra.

7. Admittedly, the writ petitioner was suspended from service on 08.12.2017 alleging involvement in a criminal case registered Crime No. 6/AC/2017 and no departmental enquiry has been initiated by the respondents. The representation made by the petitioner for revocation of suspension was rejected by the respondents on 06.03.2020. After a lapse of 4 ½ years, even at this stage both the learned counsels on either side not able to submit details with regard to the status of the criminal case pending against the petitioner.

8. Therefore, considering the above facts and circumstances of the case and in the light of the decision of the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court, it would be appropriate to direct the petitioner to submit a fresh representation to the respondents.

Accordingly, the following directions are issued;

(i). Petitioner is directed to submit a fresh representation for revocation of his suspension order with all available materials to the 1<sup>st</sup> respondent.

(ii). On receipt of such representation from the petitioner, the 1<sup>st</sup> respondent shall consider the same and pass orders on merits, in accordance with law, as expeditiously as possible, within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With the above directions, the writ petition stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1. The Secretary to Government  
Revenue and Disaster Management Department,  
Secretariat, Chennai-600009.



2. The Principal Secretary & Commissioner  
of Revenue Administration & Disaster Management,  
Chepauk, Chennai -5.

3. The District Collector,  
Collector's Office,  
Kancheepuram District - 631501.

+1cc to M/s.M.Aravind Subramanian, Advocate, S.R.No.9829

+1cc to the Government Pleader, S.R.No.9520

W.P.No.17502 of 2020  
and  
WMP.Nos. 21685 & 21686 of 2020

NRL (CO)  
SU (26/04/2022)